

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM N. MARTIN JR.,

Defendant.

Case No. 04-Cr-040 (WCG)
[T. 18 U.S.C. §§ 2241(c), 2251, 2252
2423, 2426(a) and 2]

GOVERNMENT'S PROPOSED JURY INSTRUCTIONS

NOW COMES the United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and William J. Roach and Brian E. Pawlak, Assistant United States Attorneys for said district, and respectfully requests that the Court instruct the jury in the above-entitled action utilizing the attached proposed jury instructions in addition to the Court's usual instructions.

Dated at Green Bay, Wisconsin, this 8th day of May, 2005.

Respectfully submitted,

STEVEN M.. BISKUPIC
United States Attorney

By: s/ William J. Roach

WILLIAM J. ROACH
Assistant United States Attorney

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 1

The Functions of the Court and the Jury

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform the duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 2

The Evidence

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that [certain facts are true] [that a person would have given certain testimony].

[I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.02.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 3

Testimony of Witnesses (Deciding What to Believe)

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's age;
- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

[You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.03.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 4

Weighing the Evidence–Inferences

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.04.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 5

Definition of “Direct” and “Circumstantial” Evidence

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.05.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 6

What is Not Evidence

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.06.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 7

Attorney Interviewing Witness

It is proper for an attorney to interview any witness in preparation of a trial.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.07.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 8

Number of Witnesses

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.09.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 9

The Charge – The Indictment

The indictment in this case is the formal method of accusing a defendant of a crime and placing him or her on trial. It is not evidence against a defendant and does not create an inference of guilt.

[The indictment in this case reads as follows: (Read Indictment)]

or

[You will be provided with copies of the indictment.] You may refer to the indictment as you deliberate. The indictment contains thirteen counts. Counts One, Three and Five charge William N. Martin, Jr., the defendant herein, as an accessory, with crossing a State line with intent to engage in a sexual act with a person who has not attained the age of twelve years. Counts Two, Four, Seven, Eight and Nine charge William N. Martin, Jr., the defendant herein, as an accessory, with employing, using, persuading, inducing, and enticing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct. Count Six charges William N. Martin, Jr., the defendant herein, as an accessory, with conspiring to travel in interstate commerce for the purpose of engaging in a sexual act, in violation of Chapter 109A, with a person who had not attained the age of eighteen years. Counts Eleven and Twelve charge William N. Martin, Jr., the defendant herein, with knowingly receiving a visual depiction of minors engaging in sexually explicit conduct that had been shipped and transported in interstate commerce, by means of a computer. Count Thirteen charges William N. Martin, Jr., the defendant, with knowingly possessing child pornography.

The defendant has plead not guilty to the charges.

Authority:

Seventh Cir. Pattern Jury Instructions, § 2.01 (modified).

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 10

Presumption of Innocence – Burden of Proof

The defendants are presumed to be innocent of each of the charges. This presumption continues during every state of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. A defendant is never required to prove his innocence or to produce any evidence at all.

Authority:

Seventh Cir. Pattern Jury Instructions, § 2.03

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 11

Failure of Defendant to Testify

A defendant has an absolute right not to testify. The fact that a defendant did not testify should not be considered by you in any way in arriving at your verdict.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 12

Weighing Expert Testimony

You have heard a witness [witnesses] give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.07.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 13

Prior Inconsistent Statements – Defendant

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.10

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 14

Prior Inconsistent Statements – Witnesses

You have heard evidence that before the trial a witness made a statement that may be inconsistent with the witness's testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.09.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 15

18 U.S.C. § 2241

Aggravated Sexual Abuse – Elements

Counts One, Three and Five charge the defendant with the offense of Aggravated Sexual Abuse, in violation of 18 U.S.C. § 2241 and § 2. To convict a defendant of this offense, the United States must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant knowingly crossed the state line with intent to engage in a sexual act with victim;

Second, at the time, the victim had not yet reached the age of 12 years; and

Third, the offense was committed within the State and Eastern District of Wisconsin.

In this case, “sexual act” means contact between the mouth and the penis or penis and the anus, or the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 12 years with an intent to abuse, arouse or gratify the sexual desire of any person.

“With intent to engage in” means engaging in a sexual act with a person under 12 years of age that need only be a significant or motivating purpose of crossing a state line; it need not be the most important reason of the crossing a state line but it also cannot be simply an incidental one. United States v. Vang, 128 F.3d 1065 (7th Cir. 1997); United States v. Danser, 110 F.Supp. 2d 807 (Dist. Ct. IN 1999).

The government need not prove the defendant or his co-actors knew the other person engaging in the sexual act was not yet 12 years of age.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of the offenses

charged in Counts One, Three and Five.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of the offenses charged in Counts One, Three and Five.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 16

18 U.S.C. § 2423(b)

Travel With Intent to Engage in Sexual Act– Elements

Count Six charges the defendant with Conspiring to Travel With Intent to Engage in Sexual Act with a juvenile, in violation of Title 18, United States Code, Section 2423(b) and Section 2. To convict a defendant of this offense, the United States must prove each of the propositions beyond a reasonable doubt:

First, that the defendant knowingly traveled in interstate commerce, or conspired to do so; and

Second, that at the time the defendant or others he conspired with traveled in interstate commerce he had the purpose of engaging in a sexual act with a person who had not attained the age of 18 years.

It is not necessary for the government to prove that a criminal sexual act was the sole purpose for a defendant traveling from one state to another, but the government must prove that it was a dominant purpose, as opposed to an incidental one. A person may have more than one dominant purpose for traveling across a state line. *United States v. Vang*, 128 F.3d 1065 (7th Cir. 1997).

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 17

18 U.S.C. § 2252(a)(2)

Receipt of Child Pornography – Elements

Counts Eleven and Twelve charge the defendant with Receipt of Child Pornography shipped in Interstate Commerce, in violation of Title 18, United States Code, Section 2252(a)(2). To convict a defendant of this offense, the United States must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant knowingly received a visual depiction in interstate commerce by any means, including by computer;

Second, that the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

Third, that such visual depiction is of a minor engaged in sexually explicit conduct; and

Fourth, that the defendant knew that at least one of the performers in such visual depiction was a minor and knew that the visual depiction was of such minor engaged in sexually explicit conduct.¹

The transportation of photographs via the internet is transportation that satisfies the interstate commerce clause. United States v. Runyan, 290 F.3d 223 (5th Cir. 2002).

¹This is the 9th Circuit pattern instruction as no 7th Circuit instruction exists. This jury instruction is in accord with *U.S. v. Anderson* cited above.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 18

18 U.S.C. § 2252(a)(4)

Possession of Child Pornography – Elements

Count Thirteen charges the defendant with Possession of Child Pornography, in violation of Title 18, United States Code, Section 2252(a)(4)(B). To convict a defendant of this offense, the United States must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant possessed something such as a computer hard drive containing child pornography;

Second, that the defendant knew there were images of child pornography on his hard drive;
and

Third, the item on which the child pornography was contained had been transported in interstate commerce.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 19

18 U.S.C. §§ 2251(a) and 2

Sexual Exploitation of a Child – Elements

Counts Two, Four, Seven, Eight and Nine charge the defendant with Sexual Exploitation of a Child, in violation of Title 18, United States Code, Section 2251(a) and Section 2. To convict a defendant of these offenses, the United States must prove each of the following propositions beyond a reasonable doubt:

First, at the time, the victim was under the age of 18 years;

Second, the defendant employed, used, persuaded the victim to take part in sexually explicit conduct for the purpose of producing a visual depiction of such conduct; and

Third, the visual depiction was produced using materials that had been mailed, shipped or transported across state lines or in foreign commerce.

In this case, “sexually explicit conduct” means actual or simulated sexual intercourse, masturbation, or lascivious exhibition of the genitals or pubic area of any person.

In this case, “producing” means producing, directing, manufacturing, issuing, or advertising. Computerized images are produced when computer equipment is used to copy or download the images. U.S. v. Anderson, 280 F.3d 1121 (7th Cir. 2002).

In this case, a person “uses” a minor to produce child pornography if the minor serves as the subject of photography. United States v. Sirois, 87 F.3d 34 (2nd Cir. 1996).

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 20

18 U.S.C. § 2)

Acting Through Another/Aiding and Abetting

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he/she personally committed them.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 21

Definition of “Knowingly”

When the word “knowingly” [the phrase “the defendant knew”] is used in these instruction, it means that the defendant realized what he/she was doing and was aware of the nature of his/her conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant’s conduct, and by all the facts and circumstances surrounding the case.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.06.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 22

Date of Crime Charged

The indictment charges that the offenses were committed “on or about” certain dates. The government must prove that the offenses happened reasonably close to that date but is not required to prove that the alleged offenses happened on that exact date.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.04.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 23

Separate Consideration of Charges

You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.04. (modified)

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 24

Punishment

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the court and should not be considered by you in any way in arriving at your verdict as to any count.

Authority:

Devitt & Blackmar, *Federal Jury Practice & Instructions*, § 18.02 (1977) (modified).

COUNT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 25

Selection of Foreperson – Verdict

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

(Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the appropriate form.)

OR

(Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.)

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 26

Communication with Court

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.05.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 27

Disagreement Among Jurors

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.06.

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 1 (Jury's duty regarding forfeiture)

Ladies and Gentlemen of the Jury, in view of your verdict that the defendant is guilty of Count(s) _____, you have one more task to perform before you are discharged.

What you must now decide is whether the defendant must forfeit certain property which the government claims is subject to forfeiture to the United States because of its connection to offenses involving the sexual exploitation of minors.

Under federal law, any person who is convicted of an offense involving a visual depiction of a minor, which was produced, transported, mailed, shipped or received in violation of Title 18, United States Code, Section 2251 and 2252, shall forfeit to the United States any property, real or personal, used or intended to be used to commit or promote the commission of such offense.

Property that was used to commit or promote offenses involving the sexual exploitation of a minor is any property used, or intended to be used, in any substantial way to commit or promote offenses involving the sexual exploitation of a minor. This includes property that is used or intended to be used to produce, transport, mail, ship or receive visual depictions of minors. Property need not be indispensable to the commission of the offense and need not be used exclusively for offenses involving the sexual exploitation of minors, to be committing or promoting property. All that is necessary is that the government prove that the property was used "in any manner or part" to commit or promote the commission of the violation. If a portion of the property is used in any way to commit or promote offenses involving the sexual exploitation of minors, then the entire property is forfeitable.

You must now consider what verdict to render on the question whether there is a nexus, that is a connection, between property that the Indictment alleges shall be forfeited to the United States

in each count of which you have already found the defendant guilty.

I instruct you, however, that your previous finding that the defendant is guilty of offenses involving the sexual exploitation of minors is final, conclusive, and binding. Because you are bound by your previous finding that the defendant is guilty, I direct you not to discuss in your forfeiture deliberations whether the defendant is guilty or not guilty of any offenses involving the sexual exploitation of minors.

All of my previous instructions regarding direct and circumstantial evidence, credibility of witnesses, and duty to deliberate apply with respect to your verdicts regarding forfeiture.

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 2 (Government's burden of proof regarding forfeiture)

However, my previous instructions on the government's burden of proof regarding your verdicts on the guilt of the defendant do not apply to your deliberations and verdicts regarding forfeiture. In deliberating and deciding your verdicts regarding forfeiture, I instruct you that the government need only prove by a preponderance of the evidence that property was used to commit or promote an offense involving the sexual exploitation of minors. The government is not required to prove this beyond a reasonable doubt.

I instruct you that, in order for the government to establish by a preponderance of the evidence that property was used to commit or promote an offense involving the sexual exploitation of minors, it must prove that it is more likely than not that the property was such property. In other words, "preponderance of the evidence" means that the government's evidence, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that the property was used to commit or promote an offense involving the sexual exploitation of minors. Your job is to determine whether it is more likely than not that the property was used to commit or promote an offense involving the sexual exploitation of minors. For purposes of deciding whether property was used to commit or promote an offense involving the sexual exploitation of minors, if the United States proves that property was possessed by the defendant during the period of the violation and the property was used in any way to commit or promote any covered offense, it is forfeitable.

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 3 (Jury may consider trial evidence as well as any additional evidence presented on the issue of forfeiture)

While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

United States v. Sandini, 816 F.2d 869, 873-74 (3d Cir. 1987) (issues of culpability and forfeitability should be determined in the same trial, but the jury should not consider the special forfeiture verdict until after it has convicted the defendant)

United States v. Bornfield, 145 F.3d 1123, 1134 (10th Cir. 1998), cert. denied, 120 S.Ct. 986 (2000) (quoting jury instruction that while deliberating on forfeiture "you may consider any evidence offered by the parties before your previous deliberations")

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 4 (Duty not to consider

certain issues to be decided by the court)

I further instruct you that what happens to any property that is declared forfeited is exclusively a matter for the court to decide. You should not consider what might happen to the property in determining whether the property is subject to forfeiture. In this connection, you should disregard any claims that other persons may have to the property. The interests that other persons may have in the property will be taken into account by the court at a later time. Similarly, any claims that the forfeiture of the property would constitute excessive punishment will be taken into account by the court at a later time.

Your sole concern now is to determine whether property was used to commit or promote the charged offenses.

Similarly, you are not to consider whether the property is presently available. That matter also will be considered solely by the court in imposing sentence.

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 5 (Unanimous verdict)

You must reach a unanimous verdict as to each question on each special verdict form.

Everyone must agree to any "YES" or "NO" answer or any amount you enter on a special verdict form.

Everyone must agree whether the preponderance of the evidence proves that such property was used to commit or promote the offenses for which the defendant has been convicted.

UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 6 (Special verdict forms)

Special verdict forms have been prepared for you. Each special verdict form lists the property which the government asserts is committing or promoting property.

You may answer by simply putting an "X" or check mark in the space provided next to the words "YES" or "NO". In some cases, if you answer "NO", there is a follow-up question you must answer. The foreperson must then sign and date the special verdict forms.

You will see that some special verdict forms ask you to consider separately whether certain properties are subject to forfeiture on more than one basis. Even if you find that any given property is in fact subject to forfeiture for more than one reason, that does not mean that the government will receive forfeited property twice. It is important, however, that you indicate on the special verdict form all bases on which you find any given property subject to forfeiture. Any issue of double-counting will be considered by the court in imposing sentence.

UNITED STATES' PROPOSED SPECIAL VERDICT FORM (Committing or promoting property)

COUNT: _____

Was the following property used or intended to be used, in any manner or part, to commit, or to promote the commission of, the violation of which the defendant was convicted?

1. One Seagate Baracuda ST380011A hard drive, serial number 5JV09DEH;

YES _____

NO _____

2. One Western Digital WD300BB-32CCB hard drive, serial number WMA9U1494390;

YES _____

NO _____

3. One Maxtor Diamond Max +9 hard drive, serial number Y251NSE;

YES _____

NO _____

4. One Western Digital WD800JB-00CRA1 hard drive, serial number WMA8E7975534;

YES _____

NO _____

5. One System Pro Generic Mid-Tower CPU, no serial number;

YES _____

NO _____

6. One Nikon CoolPix Digital Camera, model E990, serial number 30009000;

YES _____

NO _____

7. One Olympus Digital Camera, model D-400 zoom, serial number 48502039;

YES _____

NO _____

8. One JVD Digital Dualcam MiniDV CamCorder, serial number 10530707;

YES _____

NO _____

9. Any equipment, instrumentalities, and items used or intended to be used in the production, receiving, distribution, or possession of child pornography, including one Quantum hard drive and compact disks.

YES _____

NO _____

Foreperson sign and date the completed verdict form.

Foreperson

Date

